

PROPOSED AMENDMENTS
TO THE
CALIFORNIA CODE OF REGULATIONS
**TITLE 23, STATE WATER RESOURCES CONTROL BOARD
SECTIONS 2713, 2717-2717.7, LAWS GOVERNING RED TAGS**

DRAFT TEXT OF REGULATIONS

SEPTEMBER 2003

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

DRAFT TEXT OF REGULATIONS

Article 10. Permit Application, Quarterly Report and Trade Secret Request
Requirements

§ 2713. ~~Transmittal of Unauthorized Release Reports~~ Local Agency
Reporting Requirements.

(a) Each local agency shall transmit unauthorized release information, submitted by the owner or operator, to the appropriate ~~Regional Water Quality Board~~ regional board.

(b) Local agencies shall transmit unauthorized release update report information, submitted by the owner or operator pursuant to section 2712, to the appropriate ~~Regional Water Quality Board~~ regional board for sites where they are overseeing cleanup. Local agencies shall transmit this unauthorized release update information on a quarterly schedule established by the ~~State Water Board~~ board.

(c) On a quarterly basis, each local agency shall send to the board ~~State Water Board~~, information pertaining to local underground storage tank program implementation and enforcement activities. This information shall include, but not be limited to the number of:

- (1) tanks subject to regulation
- (2) regulated facilities
- (3) facility inspections conducted
- (4) inspected facilities in compliance with leak detection requirements
- (5) facilities received formal and informal enforcement action
- (6) underground storage tank systems that received a red tag pursuant to Article 10.5, including:

(A) the name and address of the facility at which the tank system is located;

(B) the names of the owner and operator of the tank system.

(C) the red-tag's identification number;

(D) the date the red tag was affixed to the tank system;

(E) the specific violation for which the tank system received the red tag;

(F) the date the red tag was removed from the tank system.

Authority: Sections 25299.3 and 25299.7, Health and Safety Code.

Reference: Sections ~~25286~~, **and 25292.3**, Health and Safety Code.

Article 10.5. Red Tag Authority

§ 2717. Additional Definitions.

(a) "Significant Violation" means the failure of a person to comply with any requirement of Chapter 6.7 of the Health and Safety Code or any regulation adopted pursuant to Chapter 6.7, not including the corrective action requirements in Section 25296.10 of the Health and Safety Code and Article 11 of Chapter 16 of Title 23 of the regulations, that is any of the following:

(1) A violation that is causing, or threatens to cause a liquid release of petroleum from an underground storage tank system, including, but not limited to: the failure of any required overfill prevention system, where the failure is causing or threatens to cause a release; or the failure of a required spill containment structure, where the failure is causing or threatens to cause a release to the environment due to a spill or an overfill.

(2) A violation that impairs the ability of an underground storage tank system to detect a liquid leak or contain a liquid release of petroleum in the manner required by law, including, but not limited to: tampering with leak detection equipment so that the equipment is no longer capable of detecting a leak at the earliest possible opportunity.

(3) A chronic violation or a violation that is committed by a recalcitrant violator. In determining whether a violation is chronic or a violator is recalcitrant, the local agency shall consider whether there is evidence indicating that the violator has engaged in a pattern of neglect or disregard with respect to any requirement of Chapter 6.7 or of any regulation adopted pursuant to Chapter 6.7, not including the corrective action requirements in Section 25296.10 of the Health and Safety Code and Article 11 of Chapter 16 of Title 23 of the regulations.

(b) "Imminent threat to human health or safety or the environment" means a condition that creates a substantial probability of harm, when the probability and potential extent of harm make it reasonably necessary to take immediate action to prevent, reduce, or mitigate the actual or potential damages to human health or safety or the environment.

Authority cited: Sections 25292.3(g), 25299.3 and 25299.7, Health and Safety Code.

Reference: Section 25292.3, Health and Safety Code.

§ 2717.1. Affixing Red Tags.

(a) Upon the discovery of a significant violation that poses an imminent threat to human health or safety or the environment, the local agency may immediately affix a red tag to the fill pipe of the non-compliant underground storage tank system using a tamper-resistant strap or straps, fill pipe bag, or any combination thereof so that the tag is visible to any person attempting to deliver petroleum to the underground storage tank.

Immediately after affixing a red tag pursuant to this subdivision, the local agency shall notify the operator, if present on site, of the significant violation(s) for which the red tag was issued. Within 24 hours of affixing a red tag pursuant to this subdivision, the local agency shall notify the owner of the significant violation(s) for which the red tag was issued.

(b) Upon the discovery of a significant violation that does not pose an imminent threat to human health or safety or the environment and that is not otherwise exempt pursuant to Section 2717.4, the local agency may issue a notice of significant violation to the owner ~~or~~ and operator **identifying the significant violation(s)**. If the owner or operator fails to correct the significant violation within seven business days from receipt of the notice, the local agency may affix a red tag to the fill pipe of the non-compliant underground storage tank system using a tamper-resistant strap or straps, fill pipe bag, or any combination thereof so that the tag is visible to any person attempting to deliver petroleum to the underground storage tank.

(c) Before affixing a red tag to the fill pipe of an underground storage tank system, the local agency shall document the level of stored product in the tank.

(d) The board shall provide red tags, fill pipe bags, and tamper-resistant straps made of nylon or other durable, damage resistant material to local agencies upon request, and local agencies shall use only red tags, fill pipe bags, and tamper-resistant straps provided by the board.

(e) No owner or operator of a facility may deposit or allow the deposit of petroleum into an underground storage tank system that has a red tag affixed to the system's fill pipe.

(f) No person may deposit petroleum into an underground storage tank system that has a red tag affixed to its fill pipe.

(g) Except as otherwise provided in Section 2717.2, no person shall remove, deface, alter, or otherwise tamper with a red tag so that the information contained on the tag is not legible.

(h) If a permit is required by the local agency in order to correct one or more significant violations identified pursuant to subdivisions (a) or (b), the local agency shall, to the extent feasible, expedite its review and issuance of such permit(s).

Authority cited: Sections 25299.3 and 25299.7, Health and Safety Code.

Reference: Section 25292.3, Health and Safety Code.

§2717.2. Removing Red Tags.

(a) Upon notification by the owner or operator documenting to the satisfaction of the local agency that the significant violation has been corrected, the local agency may provide written authorization to the owner or operator to remove the red tag. The local agency shall inspect the underground storage tank system within five business days of notification to determine whether the system continues to be in significant violation, regardless of whether it has authorized removal of the red tag by the owner or operator. If, upon inspection, the local agency determines that the system is no longer in significant violation and it has not already authorized removal of the red tag, the local agency shall immediately remove the red tag.

(b) Upon removing a red tag from an underground storage tank system, the local agency shall document the level of stored product in the tank. If the owner or operator removes a red tag pursuant to written authorization by the local agency, the owner or operator shall document the level of stored product in the tank immediately after removing the red tag.

(c) A red tag that has been removed by the owner or operator shall be returned to the local agency within five business days, or sooner if requested by the local agency.

Authority cited: Sections 25299.3 and 25299.7, Health and Safety Code.

Reference: Section 25292.3, Health and Safety Code.

§2717.3. Removal of Red Tag from Emergency Generator Tank Systems Prior to Correction of Significant Violation.

Notwithstanding any other provision of this Article, a local agency may remove or authorize the removal of a red tag from an emergency generator tank system before a significant violation has been corrected if the local agency determines that an emergency situation exists requiring operation of the system and the delivery of petroleum is necessary for the continued operation of the system during the emergency. For purposes of this section, an “emergency generator tank system” means an underground storage tank system that provides power supply in the event of a commercial power failure, stores petroleum, and is used solely in connection with an emergency system, legally required standby system, or optional standby system, as defined in Articles 700, 701, and 702 of the National Electrical Code of the National Fire Protection Association.

Authority cited: Sections 25299.3 and 25299.7, Health and Safety Code.

Reference: Sections 25281.5 and 25292.3, Health and Safety Code.

2717.4. Notice of Correction of Significant Violation

Upon making a determination that a significant violation has been corrected, the local agency shall notify the owner or operator in writing of its determination.

Authority cited: Sections 25299.3 and 25299.7, Health and Safety Code.

Reference: Section 25292.3, Health and Safety Code.

§2717.5. Significant Violations Exempt From Red Tags.

(a) If an underground storage tank system component is found to be in significant violation during periodic testing of the component, a local agency may issue a notice of **significant** violation or affix a red tag only if:

- (1) the violation poses an imminent threat to human health or safety or the environment; or
- (2) there is evidence the component in violation has been tampered with; or
- (3) the owner or operator fails to take appropriate action to correct the violation.

Authority cited: Sections 25299.3 and 25299.7, Health and Safety Code.

Reference: Section 25292.3, Health and Safety Code.

§ 2717.6. Content of Red Tags.

(a) A red tag shall be red in color and 3 inches wide by 5 inches long and made of plastic or other durable and damage resistant material.

(b) Red tags shall bear the following information on both sides of the tag:

(1) The following wording, printed in white at the top of the tag in all capital letters in at least 36 point bold-faced type: "PETROLEUM DELIVERY PROHIBITED!"

(2) The following wording, printed in white below the wording described in subdivision (b)(1) in at least 16 point type: "Delivering petroleum, or removing, defacing, altering, or otherwise tampering with this tag may result in civil penalties of up to \$5000 per day."

(3) Printed below the wording described in subdivision (b)(2), the following wording in at least 16 point type: "If you have questions, please contact:"

(A) Following the wording described in subdivision (b)(3), there shall be a blank area at least 1/2 inch wide by three inches long in which the local agency shall write legibly in permanent ink its name and telephone number.

(4) In the lower left hand corner, a unique identification number imprinted mechanically at the time of production.

(5) In the lower right hand corner, a graphic comprised of a blue background, the letters SWRCB in black, and white wavy lines depicting water.

Authority cited: Sections 25299.3 and 25299.7, Health and Safety Code.

Reference: Section 25292.3, Health and Safety Code.

§2717.7. Enforcement Scope of Article

Nothing in this Article shall be construed as prohibiting the local agency, board, regional board, or any other prosecuting agency from taking any other action as provided for by law, including but not limited to requiring removal of the stored substance from the tank pursuant to Section 2652 or revoking or modifying the operating permit pursuant to Section 25285.1 of the Health and Safety Code.

Authority cited: Sections 25299.3 and 25299.7, Health and Safety Code.

Reference: Section 25292.3, Health and Safety Code.